

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 15-20003-JWL

Landein Craddock and Jerome Davis,

Defendants.

MEMORANDUM AND ORDER

Defendant Jerome Davis recently filed a motion seeking to resolve a conflict between the judgment in this case and the terms of his plea agreement. Defendant's sentence included payment of restitution in the amount of \$11,097.00 to Bank of the West. Defendant's plea agreement with the government indicates that restitution would be owed for "any funds not recovered." Doc. 44 ¶ 3(e). Based on his understanding that all funds were recovered by the Bank, defendant filed a motion asking for an order directing the Bureau of Prisons (BOP) to cease deductions from defendant's inmate trust account and to recover restitution payments that he had been required to make. Thereafter, the court issued an order suspending the disbursement of additional funds to Bank of the West presently held by the Clerk of the Court pending resolution of the issue.

The government has now responded to the motion and, highly summarized, agrees that both defendant and his co-defendant Landein Craddock are entitled to refunds of amounts paid and that no further restitution is required. As explained by the government, the Federal Bureau of Investigation (FBI) is currently in possession of \$10,875 that was recovered at the time of the arrest and the Overland Park Police Department (OPPD) is in possession of \$181.00 that was

recovered during the investigation of the robbery. Both agencies have retained possession of these funds to comply with a Litigation Hold directive in another case. The government has proposed that the court issue a detailed order authorizing disposition of this matter as follows: authorizing and requiring the FBI to immediately turn over the \$10,875.00 it is holding to the United States District Court Clerk; authorizing and requiring OPPD to immediately turn over the \$181.00 it is holding to the United States District Court Clerk; directing the Clerk of the Court to issue a distribution to the Bank of the West in the balance due and owing of \$10,722.00; directing the Clerk of the Court to issue a refund check to Defendant Craddock in the amount of \$1,500.00 for the BOP offset received August 5, 2021; directing the Clerk of the Court to issue a refund check to Defendant Davis in the amount of \$25.00 for the BOP payment received September 3, 2021; directing the United States, through the Financial Litigation Program Assistant United States Attorney, to initiate a refund to the United States Treasury of the Treasury Offset Payment of \$1,184.66 received May 28, 2021, that was offset from Defendant Davis; and directing the Clerk of the Court to issue a refund of the \$344 restitution overpayment to Defendants Craddock and Davis pro rata, or \$290.58 to Defendant Craddock and \$43.42 to Defendant Davis.

With one exception, the court agrees with the government that the proposal set forth by the government will resolve this issue and it enters that order accordingly, with an additional order directing the Treasury to forward the amount of the offset back to defendant Davis. Because the OPPD is not a party to this case, the court questions whether it has the authority to order OPPD to turn over the funds it is holding to the Clerk of the Court. The court, then, will modify that request. In addition, the court will order, as requested by defendant Davis, that BOP be notified that no further restitution is required from defendants.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant Jerome Davis's motion for order (doc. 79) is **granted**.

IT IS FURTHER ORDERED BY THE COURT THAT

(1) the FBI shall immediately turn over the \$10,875.00 it is holding to the Clerk of the United States District Court for the District of Kansas notwithstanding the *Black* Litigation Hold Order;

(2) the Clerk of the Court shall contact the OPPD (with a copy of this order) to request that the OPPD immediately turn over the \$181.00 it is holding to the Clerk of the United States District Court for the District of Kansas notwithstanding the *Black* Litigation Hold Order;

(3) Upon deposit of the total of \$11,056 being turned over by the FBI (\$10,875.00) and the OPPD (\$181.00), the Clerk of the Court shall issue a distribution to the Bank of the West for the restitution balance due and owing of \$10,722.00; issue a refund check to Defendant Craddock in the amount of \$1,500.00 for the BOP offset received on August 5, 2021; and issue a refund check to Defendant Davis in the amount of \$25.00 for the BOP payment received on September 3, 2021;

(4) Upon notification of the deposit of the \$11,056 from the FBI (\$10,875.00) and the OPPD (\$181.00), the United States, through the Financial Litigation Program Assistant United States Attorney, shall initiate a return to the United States Treasury of the Treasury Offset Payment of \$1,184.66 received May 28, 2021 from an offset of Defendant Davis, which the Treasury shall then forward to defendant Davis;

(5) The Clerk of the Court shall issue a refund of the \$344 restitution overpayment to Defendants Craddock and Davis pro rata, or \$290.58 to Defendant Craddock and \$43.42 to Defendant Davis; and

(6) The United States shall notify the BOP that defendants are no longer subject to a restitution order.

IT IS SO ORDERED.

Dated this 10th day of December, 2021, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge